

BEFORE THE

Federal Communications Commission

RECEIVED

WASHINGTON, D.C. 20554

AUG 31 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266

**COMMENTS OF
UNION TELEPHONE COMPANY**

Union Telephone, Inc. ("Union"), by its attorneys and pursuant to Section 1.41 of the Rules of the Federal Communications Commission ("FCC" or the "Commission"), hereby submits its Comments in the above-captioned Further Notice of Proposed Rule Making ("FNPRM").^{1/} In the FNPRM proceeding the Commission seeks to supplement the record as to: the burden the cable rate regulation rules place on small systems; whether administrative burdens and cost compliance for small systems should be reduced; and the level of relief different types of small system should be afforded.

^{1/} Memorandum Opinion and Order and Further Notice of Proposed Rule Making, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, MM Docket No. 92-266 (Released: August 10, 1993).

OH 9

I.
STATEMENT OF INTEREST

1. Union's cable operation is extremely small with 426 total subscribers and gross yearly revenues of less than \$150,000. It is the subsidiary of Union's larger operation, a Local Exchange Carrier ("LEC") telephone company. The cable and telephone entities are financially independent of each other.

2. Union provides wire line cable service to three small towns in southwestern Wyoming: Granger, Opal and Mountain View. Mountain View is the largest operation with 342 subscribers. Granger has 57 subscribers and Opal has 27 subscribers. The area of service is sparsely populated, covers difficult terrain, and is subject to extremely harsh winter conditions.

II.
UNION IS AN INDEPENDENTLY OWNED SMALL SYSTEM

3. Union, comprised of the cable operation and a LEC, is independently owned. Union is not affiliated with, or controlled by, any other entity or entities, including multiple system operators ("MSOs"). Union's cable operation does not receive any cross-subsidizations from its affiliated LEC. Union does not enjoy "volume discounts for

programming, favorable rates on debt acquisition, and discounts on equipment, maintenance and supplies."^{2/}

4. As of the date of this filing, Union has 426 cable subscribers. As such it is well below the 1,000 subscriber limit for being defined as a "small system" by the Communications Act.^{3/}

5. Further, as an independently owned small cable system that serves a remote community, Union provides a needed service to rural customers and is in the public interest.

III.

UNION'S CABLE OPERATION SERVES THE PUBLIC INTEREST

6. Union Telephone's cable operation is not a typical, high-profit urban venture and instead is a public-minded operation which merely seeks to provide rural consumers with the same access to information enjoyed by the majority of the nation's citizens.

^{2/} FNPRM at 13.

^{3/} Communications Act, Section 623(i), 47 U.S.C. § 543(i).

7. The broadcast television programming in southwestern Wyoming is limited and traditional television reception is often poor. Union's rural customers would not be able to receive clear programming, and the wide array of channel choices without Union's commitment to service the sparsely populated area. This access to a greater choice of news and entertainment services provides the community with the ability to further enmesh itself into the nation's mainstream.

8. Moreover, Union's cable operation has never posted a profit. In 1991, Union's cable operation lost \$25,889. In 1992, the cable operation lost \$18,783. This is obviously not a business which is charging excessive rates and reaping windfall profits. Instead, it is a baseline business with a proven track record of providing the community with a tangible beneficial service.

IV.

FORCING UNION TO COMPLY WITH THE BURDENSOME REGULATIONS MAY COMPEL IT TO ABANDON ITS CABLE BUSINESS

9. Forcing compliance with burdensome regulatory and rate structures will further hamper Union's ability to reach a break-even point. Union's cable operation has less than five (5) full- and part-time employees. The operation is

designed to provide wireline cable service to far-flung subscribers as simply and efficiently as possible within the constraints of a limited revenue stream.

10. It is hard to understand how the rate regulations, in their current form, are fair to small rural systems. The regulations have a disproportionate effect on small systems. One hundred percent of Union's cable personnel will have to spend a significant amount of time complying with the regulation's various demands. This is a severe drain on Union's resources and threatens its viability as a business concern. Importantly, the impact on the resources of large systems is not nearly as significant as that on small systems. It is hard to imagine, for example, a large system having to divert all of its employees for a significant amount of time in order to comply with the regulations.

11. The Communications Act clearly contemplated the inordinate burden small systems would have to undertake.

SMALL SYSTEM BURDENS - In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of

compliance for cable systems that have 1,000 or fewer subscribers.^{4/}

Union is exactly the type of system contemplated by Congress to be a candidate for streamlined regulation. Should the FCC decide to "tier" the levels of regulatory relief available, Union would positively belong in the tier which deserves the most relief. This is because Union has less than 1,000 subscribers, covers a "hard to serve" rural area, and does not benefit from any affiliation with other cable operations. Thus, it should be placed in a category where it will be accorded the maximum amount of regulatory relief available.

V.
CONCLUSION

12. The FCC temporarily stayed implementation of its cable rate regulations for cable systems with 1,000 or fewer subscribers. This stay is definitely temporary and will be lifted once the FCC has determined the extent of the costs and administrative burdens that the rate regulations place on small systems.

^{4/} Communications Act, Section 623(i), 47 U.S.C. § 543(i).

13. To assist with the decision making process, the FCC issued a FNPRM to help it develop a record on how to best streamline the rate regulation system and determine which small systems should be allowed to benefit from the streamlined regulation. The FCC is concerned that the relief it plans to supply to small systems is not distributed to entities which do not deserve a relaxed burden. In particular, the FCC is curious about the differences between small systems which are independently owned and those which are affiliated with or controlled by MSOs. The concern is that small systems which have ties to larger, well-funded entities such as MSOs will not be as severely affected by the rate regulations.

14. Union's cable operation will be strongly affected by the outcome of the FNPRM. As an independently owned small system which does not make a profit and is not affiliated with another cable entity, the current rate regulations are devastating. Small systems such as Union's which must meet the same compliance costs and administrative scrutiny as large systems are placed under a disproportionate overall burden. Without streamlined regulation for small systems such as Union's, which often function as the primary means of television access for rural consumers, there is a real danger that they will be forced


out of business. Such a result would harm the public interest.

WHEREFORE, THE PREMISES CONSIDERED, the Union Telephone Company respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

UNION TELEPHONE COMPANY

By:


Shirley S. Fujimoto
Joseph M. Sandri, Jr.
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4242

Its Attorneys

Dated: August 31, 1993